

August 20, 1993



STATE OF CALIFORNIA

**STATE BOARD OF EQUALIZATION**

LEGAL DIVISION (MIC:82)  
450 N STREET, SACRAMENTO, CALIFORNIA  
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July 9, 1993

Mr. Robert C. Petersen  
Santa Cruz County Assessor  
701 Ocean Street  
Santa Cruz, CA 95060

Attn:  
Division Director-Administration

Re: Property Tax Rule 462.5

Dear Mr. :

Your letter of June 21, 1993 to Mr. Richard Ochsner requested the Legal Staff's opinion regarding the issue of comparability as to utility and function with respect to Santa Cruz County APN's through .

The facts provided in the letters you enclosed can be summarized as follows: Mr. and Mrs. , (Mr. 's clients) are considering selling their vacant CC commercial zoned land, located at , Santa Cruz, California, to the Redevelopment Agency of the City of Santa Cruz. In the event the sale is consummated, Mr. 's clients would like to purchase a multiple-unit residential property or properties (i.e., an apartment building(s)) as "replacement property". The have inquired as to the property tax treatment of the replacement real property to be purchased by them in the event a sale takes place.

LEGAL ANALYSIS

Section 68 of the Revenue and Taxation Code implements

subdivision (d) of Section 2, article XIII A of the California Constitution and provides an exclusion for change in ownership for the acquisition of real property as a replacement for property taken by eminent domain, etc. Section 68 is implemented by Board Rule 462.5.

Board of Equalization Property Tax, Rule 462.5 subdivision (a), (18 California Code of Regulations Section 462.5) provides that

"The term 'change in ownership' shall not include the acquisition of comparable real property as replacement for property taken if the person acquiring the replacement real property has been displaced from property in this state by:

(1) Eminent domain proceedings instituted by any entity authorized by statute to exercise the power of eminent domain, or

(2) Acquisition by a public entity, or

(3) Governmental action which has resulted in a judgment of inverse condemnation.

In addition, Rule 462.5 subdivision (c), states, in pertinent part, that replacement property "shall be deemed comparable to the replaced property if it is similar in size, utility, and function." Further, property is similar in function if the replacement property is subject to "similar governmental restrictions, such as zoning". Further, property is similar in size and utility "only to the extent that the replacement property is, or is intended to be, used in the same manner as the property taken". Example properties given include vacant, commercial, single-family residential and duplex, and multi-family residential other than duplexes.

Rule 462.5, subdivision (c)(2)(A), further specifies that

"A replacement property or any portion thereof used or intended to be used for a purpose substantially different than the use made of the replaced property, shall to the extent of the dissimilar use be considered not similar in utility."

Based on the facts presented, it is clear that there are substantial differences between the proposed replacement property and the property to be replaced, i.e., the property to be sold is vacant CC commercial zoned land and the replacement property will be multi-family residential. Under Rule 462.5(c) those differences have been specifically recognized as differences in

size and utility that preclude the replacement property from being regarded as comparable real property.

Subdivision (c)(3) of Rule 462.5 specifies that

"To the extent that replacement property, or any portion thereof, is not similar in function, size and utility, the property, or portion thereof, shall be considered to have undergone a change in ownership."

Based on this subsection, because vacant land and multi-family residential property are not "comparable" within the meaning of Rule 462.5 and Section 68, if the sale is consummated and the acquire a multiple-unit residential property or properties, the multiple-unit residential property or properties will have undergone a change in ownership.

As you know, the views expressed in this letter are advisory only and are not binding upon the assessor of any county. Please do not hesitate to contact our office should you have further questions.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,

/s/ Luma G. Serrano

Luma G. Serrano  
Staff Counsel

LGS:jd  
precednt/emdomain/93001

cc: Mr. John Hagerty, MIC:63  
Mr. Verne Walton, MIC:64